IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.450 OF 2021

Afzal Hanif Nagaria ... Applicants

Versus

The Union Of India And Anr. ... Respondents

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Mr. Taraq Sayed a/w Ms. Chandani Tanna, Ms. Shrushti Relekar, i/b. India Law Alliance, Advocate for the Applicant.

Mr. Jitendra B. Mishra, Special P. P. For Respondent No.1.

Ms. M. R. Tidke, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd MARCH, 2021

PER COURT:

1. This is an application for anticipatory bail in connection with Summons No. CBIC-DIN-20201267VR000000DFES dated 2nd December 2020 issued by the respondent No.1. The Summons was issued under Section 70 of the Central Goods and Services Tax Act, 2017 (for Short “CGST Act”). The applicant was summoned to appear for enquiry in connection with M/s. Neha Impex under CGST Act, 2017. The applicants attendance is necessary to give evidence and produce documents or things in his possession such as purchase invoices and ledgers for the period 2017-18 to 2nd December, 2020,

bank statement, shipping bill, transport documents in respect of ASP Impex, Universal Traders, Fab India Impex, Fab India Exports, Tex Fab India, Nagaria Exports, Alliance Corporation, Pacific International and Faisal Traders.

2. It is the case of the respondent No.1 that the applicant along with his father Mohammed Hanif Nagaria and brother Faisal Hanif Nagaria carry business of exports of ready-made garment and imitation jewellery. They have incorporated nine companies. In furtherance of their business the applicants' company/firms purchased goods from M/s. Neha Impex & M/s Rohini Impex for export. The aforesaid firms in turn purchased their goods from Mahalaxmi Traders, allegedly non-existent. M/s. Neha Impex & M/s Rohini Impex and Mahalaxmi Traders were allegedly floated by the applicant, his father and brother by preparing false documents with intention to avail and utilize inadmissible 'Input Tax Credit' and to avail the export benefits. The father and the brother of the applicant were summoned and interrogated on 26^{th} & 27^{th} November, 2020. They were arrested in accordance Section 132(1)(b), 132(1(c) and Section 132 (e)(e) of CGST Act

3. The applicant preferred application for anticipatory bail before the Sessions Court apprehending arrest. The said application

was rejected by the Sessions Court vide order dated 30th January, 2021.

4. The learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The father and brother of the applicant were already arrested and they were granted bail. The applicant along with his father had incorporated four companies, namely, M/s. Alliance Corporation, M/s. Tex Fab India, M/s. Fab India Exports and M/s. Nagaria Exports and they are in the business of ready-made garments. The applicant is silent partner in the firms. Goods were purchased from M/s. Neha Impex & M/s Rohini Impex for the purpose of export in the month of September, 2020. The applicant and his father never met proprietors of M/s. Neha Impex and M/s. Rohini Impex and all purchase transactions had taken place through brokers. After following due procedure, goods were exported and the amount was realized from buyers. The applicant is relying upon the bank statements evidencing the payment made to M/s. Neha Impex and M/s. Rohini Impex and payment received from the buyer. Reliance is also placed on the copies of lorry receipts and shipping bills which shows the movement of goods. It is therefore contended that the purchases from M/s. Neha Impex & M/s Rohini Impex were legitimate transactions and all

the purchased goods had been exported. The applicant is willing to cooperate with the investigation. He need not be subjected to custodial interrogation. It is submitted that the father and brother of the applicant were released on bail vide order dated 16th December, 2020. The applicant had complied directions of learned Sessions Court vide interim order and attended respondent's office. His statement is recorded. The applicant has not claimed/filed GST returns and no loss is caused to exchaquer. Sachin Gaikwad has denied acquaintance with applicant. Through Jagdish Chouhan and Mourya Sachin Gaikwad was introduced to Sameer Patel. It is further submitted that Section 64 of the CGST ACT relates to summary assessment in special cases wherein the Officer should be in possession of evidence showing that there is tax liability of the person and the officer believed that any delay in assissing such tax liability would result in adverse effect on revenue. After conducting requisite assessment, the officer may proceed to determine the tax in other dues, under this Act in terms of Section 73 or 74. After proper assessment and subsequent initiation of proceedings under Sections 73 & 74 of CGST Act by issuing show cause notice in personal hearing a subsequent order demanding tax that the recovery proceeding under Section 78 and 79 can be invoked. It is further submitted that the applicant is only a partner in four out of the nine entities incorporated by his father. There are documents on record to show the transactions were genuine. The respondents have failed to provide information specifically in relations to the transactions made and the tax involved in respect to the said four entities in which the applicant is partner. Section 70 of CGST Act deals with power to summon a person to give evidence. It provides for information that assessee may give to proper office to facilitate the investigation. The applicant attended office of respondent on 6th January, 2021 to 8th January, 2021 and thereafter on 11th and 12 January, 2021. The applicant had provided all the documents in respect to the four entities which is evident from letter dated 11th January, 2021. The applicant has cooperated with the investigation. He was only interrogated on the first date and was required to attend the office on subsequent date. The father and the brother of the applicant were already subjected to custodial interrogation. The bank statements, lorry receipts which are placed on record substantiate the contention of the applicant that the transactions are legitimate.

5. Learned counsel for the applicant relied upon the decision of the High Court of Delhi delivered in the case of ***Lupita Saluja Vs. DGGI and Anr.*** It is submitted that in the aforesaid

decision, the Court had observed that the material on record establishes that the suppliers have supplied goods to the company and it is misconceived that the suppliers were non existent. In the present case it cannot be said that there were no actual transactions. Goods were purchased and the same were exported which is evident from the amount deposited in the account. Learned counsel also relied upon decision of Karnataka High Court, in the case of ***Shravan Mehra Vs. Superintendent of Central Tax, Anti Evasion, GST Commissionerate, Bangalore.*** In this case anticipatory bail was granted on the ground that maximum punishment is five years and taking into consideration magnitude of offence and it is not punishable with death or improsonment for life. Offence is compoundable with authority. He relied on and the decision of the High Court for the State of Telangalana at Hyderabad in the case of ***P. V. Ramana Reddy Vs Union of India,*** decision of this Court in the case of ***Mr. Ashok Kumar s/o Shri. Chandrapal Singh and Ors. V/s. Commissoner CGST & Central Excise, Navi Mumbai Commissionerate and Anr***[1], decision in the case of ***Jaychandran Alloys (P) Ltd. V/s. Superintendent of GST & C.Ex. Salem***[2] and ***Hanumanthappa Pathrera Lakshmana V/s. State, Senior Intelligence,***

1 2020(41) G.S.T.L. 311 : 2020 (82) GST 58.
2 2019(25) G.S.T.L. 321 (Mad.)

Officer, D.G. of GST Iltelligence, Bengaluru[3] etc. On the basis of the ratio laid down in the decisions, learned counsel for the applicant submitted that the action could be initiated only after the assessment and in the event transactions are genuine which are fortified by the documents, the applicant need not be subjected to custodial interrogation.

6. Learned counsel for the respondent relied upon the affidavit in reply and opposed the application for anticipatory bail. It is submitted that the transactions are bogus. firms M/s. Neha Impex & M/s. Rohini Impex had issued invoices showing supply of goods to nine firms being managed by Faisal Nagaria the brother of applicant and Hanif Nagaria father of applicant and the applicant. The applicant is partner in four firms and the remaining firms also managed by same set of persons. The two dummy units M/s. Neha Impex & M/s Rohini Impex were apparently created with the intention of availing 'Input Tax Credit' and to cover up for the goods being exported by the said accused which they have procured without any documents. It is submitted that, during the interrogation the applicant have failed to cooperate. He has not answered questions regarding business put to him by the respondents and the only contention adverted by him is that he is not aware of the facts

3 2020(38) G.S.T.L. 447 (Kar.)

of the business and his father is conducting the same. The applicant failed to provide the details of CHA or shipping agent who assisted him in exporting the goods. During the course of investigation, statement of Jagdish Bhikhabhai Chauhan proprietor of M/s. Rohini Impex was recorded on 26th November, 2020. Statement of Sachin Waman Gaikwad, proprietor of M/s. Neha Impex was recorded on 5th January 2021. In their statements they have stated that they had never done any business of ready-made garment and they do not know the applicant nor the firms managed by applicant, his father and brother. From E-way bills issued by M/s. Neha Impex & M/s. Rohini Impex, it is seen that the four firms in which the applicant is a partner, has been issued invoice showing total assessable value as Rs.130.90 Crores and the total tax in respect of the said transaction is 8.08 Crores. The details of the transactions are provided in the affidavit-in-reply. It was also submitted that out of the amount of Rs.130.90 Crores payable by the firms of applicant to M/s. Neha Impex & M/s. Rohini Impex an amount of 14.87 crores has been paid till date. M/s. Neha Impex & M/s. Rohini Impex have not provided any goods to the applicant. The applicant is yet to pay 116.03 Crores to the so-called suppliers whereas the said suppliers have denied ever having supplied any goods to the applicant's firms. The applicant has to pay amount of Rs.116.03 Crores to the suppliers. Suppliers have not paid any tax on goods. He further submitted that the facts clearly prove that the applicant had procured the invoices from the said two firms. The said firms have been created only to facilitate the procurement of invoice and to evade tax. The entire benefit of illegal activities of the said firms are flowing to nine firms being managed by the applicant and his family members. While granting bail to the father and brother of the applicant it was observed by the Court that the main culprit in this case is applicant and Sameer patel who have not yet been accosted by the department. Complicity of the applicant is writ large. The custodial interrogation of the applicant is necessary. The submission of the applicant that payment was made to M/s. Neha Impex & M/s. Rohini Impex cannot be considered, in view of the fact that the said concern never conducted any business and the proprietors of M/s. Neha Impex & M/s. Rohini Impex had categorically stated that they have never sold any goods to any person. Learned counsel for the respondent also relied upon the decision in the case of ***Mr. Ashok Kumar s/o Shri. Chandrapal Singh and Ors. V/s. Commissoner CGST & Central Excise, Navi Mumbai Commissionerate and Anr.*** (Supra). It is submitted that, this Court in this decision observed that respondent's contention that applicants detention in custody is necessary to prevent him from causing the evidence of offence to dissapear or tampering evidence is well founded. The submission that, officer under the CGST Act cannot take custody of the arrested persons cannot be accepted. He also relied upon the decisions in the case of ***P. V. Ramana Reddy Vs Union of India*** (supra). In this decision it was observed that to say that prosecution can be launched only after completion of assessment goes contrary to section 132 of CGST Act, 2017. The said decision was confirmed by the Apex Court. Learned counsel also pointed order passed by division bench of this Court in writ petition No. 3804 of 2019. In this case it was contended that investigation cannot commences without following Section 154 or 155 of Cr.P.C. The Court refused to grant relief. Reliance is also placed on decision of Madhya Pradesh High Court. In the case of ***Shailesh Rajpal V/s. Rajpal V/s Commissioner 2020 (32) GSTL 336 (MP)*** and ***Himani Munjal V/s. Union of India decided by Rajasthan High Court, 2019 (31) GSTL 608 (Raj).*** It is submitted that Section 69 of CGST Act, 2017, bestows the power on the commissioner, if he has reason to believe that, a person has committed an offence, specified in clause (a)(b)(c) or (d) of Section 132 which is punished under clause (I) or (ii) of sub Section (1) or Subsection (2) of said Section. The CGST

Act, 2017 is a self contained Act, and the commissioner of CGST Act, 2017 is authorized and bestowed with the powers to arrest a person if he has reason to believe that the said person has committed an offence which is liable to punishment under Section 132 (1)(i) of the Act. The act also provided the safeguard of liberty to the person arrested in as much as the person arrested has to be produced before the Magistrate within 24 hours.

7. The Hon'ble Supreme Court in Special Leave Petition No.4322-4324/2019 filed by the Union of Indian challenging the ad-interim relief granted by the Bombay High Court in the case of *Union of Indian V/s. Sapana Jain & others* vide its order dated 29th May, 2019 has held as under :-

> *"We make it clear that the High Court's while entertaining such request in future, will keep in mind that this court by order dated 27th May, 2019 passed in SLP (Crl) No. 4430/2019 had dismissed the SLP filed against the Judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case".*

8. Consequent to the decision of the Hon'ble Supreme Court in the case of *Union of India V/s. Sapana Jain and Others,* the Hon'ble Bombay High Court has refused to grant any bail to the

similarly placed Applicants in such cases. The respondent relied upon the decision of the Hon'ble Bombay High Court in the case of *Ashish Jain V/s. Union of India & Ors.* In Writ Petition No. 3804 of 2019 wherein the Hon'ble High Court of Bombay has refused to entertain writ petition filed by the petitioner seeking interim protection of prevention from arrest in the nature of an anticipatory bail.

9. The Hon'ble High Court for the State of Telangana in Writ Petition No. 4764 of 2019 in the case of *P.V. Ramanna Reddy & Ors V/s. Union of India* in its order dated 18th April, 2019 had upheld that authority and power of the Commissioner of CGST to arrest. The Hon'ble High Court had also referred to the ratio laid down by the Constitution Bench in Kartar Singh and ratio laid down in Kum. Hema Mishra that jurisdiction under Article 226 of the Constitution of India to grant protection against arrest should be sparingly used. After verifying the allegations against the petitioners and the circumstances prevailing in that case the Hon'ble High Court refused to grant any interim relief to the petitioners.

10. The Telangana High Court also held that the object of pre-trial arrest and detention to custody pending trial are manifold such as :

a) To prevent such person from committing any further offence.

b) Proper investigation of the offence

c) To prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner

d) To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.

11. According to respondent the transactions prima facie suspicious. The complicity of the applicant is established during the course of investigation. It is pertinent to note that the case of the respondent is that all accused had acted in connivance with each other. The applicant had admitted that the applicant is partner in four firms. Statement of Sachin Gaikwad shows that, he does not own any firm by name M/s. Neha Impex. Jaghish Chauhan had approached him and requested him to meet his friend Mourya, who in turn introduced him to Sameer Sayeed Patel for the purpose of opening bank account with ICICI Bank. He provided blank cheque of

Kotak Mahindra Bank. According to Sachin Gaikwad he did not obtain any GST registration number. Blank cheques were provided according to Sameer Patel. He had not obtained any registration number. The statement of Jagdish Chauhan, would indicate that several questions were put to him. He stated that he was approached by Sameer Patel, who offered him job of collecting documents for the purpose of opening Current account and rent agreements. He was paid salary of Rs.15000/-. He was informed by Sameer Patel that he wish to open a firm M/s. Rohini Impex in his name. He allowed him to do so and opened the firm M/s. Rohini Impex. He had not signed any cheques or RTGS forms for the said account. He also stated that M/s. Neha Impex was created by Sameer Patel. He do not know any person Sachin Gaikwad and that they do not own the premises situated at A-1, Room No.8, Om Shivai CHS Ltd. Devipada Lane, Near Gulmohar Society, Borivali East. Thus, prima facie there is sufficient evidence against the applicant/accused. It is apparent that the goods worth Rs. 2.47 Crores were allegedly purchased from M/s. Neha Impex and M/s. Rohini Impex. They had in turn purchased the goods from M/s. Mahalaxmi Traders. As per the investigation, M/s. Mahalaxmi Traders is not in existence. The firms and the companies of the applicant which are conducted by him along with his father and brother had according to respondent evaded tax. Sachin Gaikwad has stated that he is not owner or proprietor of M/s. Neha Impex. Statement of Jagdish Chauhan also transpired that he is dummy proprietor of M/s. Rohini Impax. Owners of M/s. Neha Impex and M/s. Rohini Impex have stated that they have not provided any goods to applicant. The submission about payment to M/s. Neha Impex & M/s. Rohini Impex cannot be considered to be evidence of legal commercial contract since they have never conducted any business. They have not sold goods. There is no infirmity or illegality in summons issued by respondents. Considering these circumstances, no case for grant of anticipatory bail is made out.

ORDER

Anticipatory Bail Application No. 450 of 2021 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)